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March 28, 2005

Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, TN 37243-0505

Via Hand Delivery

Attention: Sharla Dillon, Docket Manager

Re: Petition of On-Site Systems, Inc. To Amend Its Certificate of Convenience and
Necessity
Docket No. 03-00329

Petition of Tennessee Wastewater Systems, Inc. To Amend Its Certificate of
Convenience and Necessity
Docket No. 04-00045

Dear Chairman Miller

I have enclosed for filing an original and fourteen copies of the Response of Tennessee Wastewater Systems, Inc. to Motion of Director Jones to Review Initial Order in this consolidated matter. Please return the extra copy to me stamped filed.

In his Motion Director Jones gave the parties an opportunity to participate in oral argument on the issues raised in his Motion after the Authority Conference on April 4, 2005. Tennessee Wastewater Systems, Inc. submits that its Response and the other pleadings filed in this consolidated docket fully address the legal issues raised by Director Jones, and counsel for Tennessee Wastewater Systems, Inc. will not participate in the oral argument. Thank you for your assistance in this matter.

Sincerely yours,

Donald L. Scholles

DONALD L. SCHOLLES

Enclosures

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Pat Miller, Chairman
March 28, 2005
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c Charles Pickney, Jr.
Mark Jendrek
Charles B. Welch, Jr.
G. Scott Thomas

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF ON-SITE SYSTEMS, INC. TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY)	Docket No. 03-00329
)	
)	
and)	
)	
PETITION OF TENNESSEE WASTEWATER SYSTEMS, INC. TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY)	Docket No. 04-00045
)	
)	

**RESPONSE OF TENNESSEE WASTEWATER SYSTEMS, INC. TO DIRECTOR
JONES' MOTION TO REVIEW INITIAL ORDER**

On February 22, 2005, Director Jones filed a Motion to review two legal issues arising out of the Initial Order issued in this consolidated docket by the Hearing Officer, Randal L Gilliam. Petitioner, Tennessee Wastewater Systems, Inc. (the Company), did not file a petition to appeal Mr. Gilliam's Initial Order. The Company is filing this response because Director Jones invited a response from the parties, because these legal issues could affect future applications for certificates of public convenience and necessity filed by the Company and other public utilities regulated by the Authority and because the Authority's decision on these two legal issues may support a finding that the Company's Petitions in this consolidated docket be granted.

(1) Did the Hearing Officer correctly conclude that “it is reasonable to construe the term ‘utility water service’ as used in Tenn. Code Ann. § 6-51-301(a)(1998) as including sanitary sewer service.”

The Company took the position at the hearing in this matter that the term “utility water service” in T.C.A. § 6-51-301(a) did not include sanitary sewer service. The Company’s Post-Hearing Brief sets forth in detail its legal reasoning in support of this position and would refer the Authority to its Post-Hearing Brief on this issue. The Company argued that the legislature did not intend to include sanitary sewer service when it used the phrase “utility water service” for two primary reasons. First, the plain and ordinary meaning of the phrase “utility water service” would not include sanitary sewer service. The primary rule of statutory construction is to determine the legislative intent and purpose of a statute by the natural and ordinary meaning of the language used when read in the context of the entire statute. *Oliver v King*, 612 S.W.2d 152, 153 (Tenn. 1981).

Second, the legislature had demonstrated an ability to clearly indicate by express language when it intended to use the term utility to include all utility services and when it intended to address specific utility services in T.C.A. § 6-51-301. “Where the legislature includes particular language in one section of the statute but omits it in another section of the same act, it is presumed that the legislature acted purposefully in including or excluding that particular subject.” *Bryant v Genco Stamping & Mfg Co*, 33 S.W.3d 761, 765 (Tenn. 2000). For similar reasons the Tennessee Attorney General concluded that sanitary sewer service was not included within the term “utility water service” in T.C.A. § 6-51-301(a) in Opinion 04-134.

(2) Did the Hearing Officer correctly determine that granting a certificate of convenience and necessity (“CCN”) places “additional legal and administrative burdens on private companies who later seek to provide service in the area covered by the CCN?”

The Company asserts that the grant of a CCN for the area requested in Sevier County would require that the Authority make a finding that the Company’s facilities were inadequate to meet the reasonable needs of the public for sewer service or that the Company refused or was unable after notice and a reasonable opportunity to provide sewer service within its certificated service area before granting another public utility the right to provide sewer service within the area covered by the CCN. The Company does not agree that the grant of the CCN requested in Sevier County places additional legal and administrative burdens on private companies who later seek to provide service in the area covered by the CCN. In enacting T.C.A. § 65-4-203, the legislature intended to place such a burden on any public utility seeking to provide service within the certificated service area of another public utility.

The language of T.C.A. § 65-4-203 contemplates that a public utility be granted a CCN to serve an area larger than the area the utility may initially be able to serve upon the grant of the CCN. An existing public utility is given the opportunity to provide service within its certificated service area before a competing utility is permitted to serve within the certificated service area. Therefore, to the extent a public utility desires to compete with an existing public utility within its certificated service area, such “additional legal and administrative burdens” have been placed upon the public utility seeking to compete by the legislature not by the original grant of a CCN by the Authority. This legislative scheme was designed promote the provision and extension of utility services to larger areas by giving the public utility granted such an area the prior right to

serve but preserving the right for another public utility to provide service when the existing public utility is unable or unwilling to provide service within such larger areas

In the event the Authority concludes that “utility water service” as used in T.C.A. § 6-51-301(a) does not include sanitary sewer service, the primary concern of the City of Pigeon Forge is not an issue in this case. If T.C.A. § 6-51-301(a) does not apply to sewer service, then the grant of the CCN requested by the Company would not preclude the City of Pigeon Forge from providing sewer service to any area within its urban growth boundary not being served by the Company

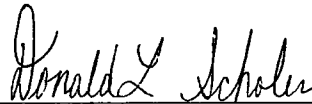
If the grant of a CCN to the Company does not impose additional legal and administrative burdens on future private companies desiring to provide sewer service within the Company’s certificated service area not contemplated by the legislature, then the Company’s Petitions in this consolidated docket should be granted. At the Authority Conference on October 21, 2003, the Authority concluded that the Company should be granted a CCN to serve all of Sevier County with the exception of (1) the area presently being served by East Sevier Utility District, (2) the area presently within the city limits and urban growth boundaries of Sevierville, Pigeon Forge, Gatlinburg and Pittman Center, (3) Valley Mart Exxon, 3201 Wears Valley Road, Sevierville, Tennessee, and (4) Cove Mountain Realty, 3174 Wears Valley Road, Sevierville, Tennessee in Docket No. 03-00329. The Company amended its Petition to include the area within the urban growth boundary of the City of Pigeon Forge in Docket No. 04-00450. Since the City of Pigeon Forge has the right to provide sewer service within its urban growth boundary in any area not served by the Company and has the right to take over the provision of sewer service in any area served by the Company upon annexing such area, the grant of the CCN

in Docket No. 04-00450 is consistent with the Authority's decision at its October 21, 2003 Conference

Should the Authority agree with the Company's position on the two legal issues raised by Director Jones in his Motion, the Company respectfully requests that the Authority grant its Petitions in this consolidated docket.

Dated this 28th day of March, 2005.

Respectfully submitted,



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CERTIFICATE OF SERVICE

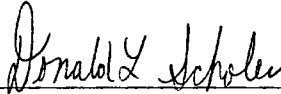
The undersigned hereby certifies that the above and foregoing Response has been served upon the following persons on this 28th day of March, 2005 by U S Mail, postage prepaid:

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